

## ARTICLE 10. SIDEWALK CAFÉ REQUIREMENTS.

### Section 14-188. Definitions. (Ord. 1828 enacting Section 14-188, eff. 3-30-07)

In this chapter:

- (1) DEPARTMENT means the Planning Department.
- (2) DIRECTOR means the director of the Planning Department.
- (3) PUBLIC STREET has the meaning prescribed to “street” in Section 14-2.
- (4) SIDEWALK CAFÉ means an outdoor dining area located on a sidewalk, containing removable tables, chairs, planters or other appurtenances and abutting and contiguous to a restaurant which performs food preparation, sanitation, and related services for the sidewalk café.

### Section 14-189. Exception For City Uses.

This chapter does not apply to the City’s use of a public street.

### Section 14-190. Sidewalk Cafe License Authorization.

(A) The Director shall establish licensure criteria and requirements, approved by City Council by resolution, under this chapter, including:

- (1) those necessary to protect public use of a street or a City or other utility;
- (2) required clearances between the sidewalk café and utility lines as prescribed by the Building Code;
- (3) a requirement that the licensee provide the City with a cash or surety bond sufficient to cover the cost to the City or a public utility to remove the sidewalk café, if necessary;
- (4) a requirement that the licensee pay the cost to relocate a City or other utility facility or improvement in a public street in connection with the installation of the sidewalk café; and
- (5) authorization for the City or a public utility to remove, without liability, part of the sidewalk café if necessary to obtain access to a City or other utility facility or improvement.

(B) The Director shall file a copy of the criteria and requirements adopted under this section with the city clerk.

### Section 14-191. Restrictions On Features Of Sidewalk Cafe.

(A) A sidewalk café operated under this chapter:

- (1) may not be enclosed by fixed walls or other permanent structure; and
- (2) must be open to the air, except that a canopy conforming to requirements established by the department may be constructed over the sidewalk café.

- (3) must comply with Sections 14-193.

**Section 14-192. Authorized Applicant.**

The owner of the fee title to real property under a public street or a lessor authorized in writing by the owner may apply for a license to establishment and operate a sidewalk café.

**14-193. Application Required.**

- (A) An applicant must file an application with the Director on a form approved by the Director.
- (B) An application under this chapter must include:
  - (1) an application fee as established by separate resolution;
  - (2) proof of fee title ownership to the real property under the public street and, if applicable, lessor authorization;
  - (3) a map or plat showing the area to be licensed;
  - (4) information on the type of sidewalk café to be established, including:
    - (a) the number and placement of tables, chairs, and other furnishings; and
    - (b) the name and address of the adjacent restaurant that will serve the sidewalk café;
  - (5) proof of general commercial liability insurance coverage in the amount established by the department to protect the City's interest; and
  - (6) other information required by the department.

**Section 14-194. Review, Findings, and Determination.**

- (A) The Director shall deliver a copy of each application the Director receives for comment to:
  - (1) affected City departments; and
  - (2) the property owners and tenants whose property or businesses are immediately adjacent to the proposed licensed area.
- (B) Not later than the 30th day after the Director receives an application, the Director shall make findings of fact based on a review of the application and any comments received under Subsection (A).
- (C) The Director shall notify an applicant that an application is approved if the director finds that the proposed sidewalk café:
  - (1) is not located on, extend onto, or intrude on a portion of a roadway or a sidewalk necessary for pedestrian use;
  - (2) is planned to minimize potential harm or injury to the public or interference to public use of a public street;

- (3) does not create a hazardous condition or obstruction of vehicular or pedestrian traffic on a public street; and
- (4) meets the requirements of this chapter and the criteria and requirements established by the department.

(D) The findings made by the director under this chapter are exclusively for the use and benefit of the City to determine if the department's license criteria have been met. The applicant may not rely on the director's findings as a certification or guarantee by the City that the findings are correct, complete, or accurate.

(E) If the director fails to make a determination on an application on or before the 30th day after receipt of the application, the application is denied.

#### **Section 14-195. Denial Of Application; Reconsideration.**

(A) The Director shall notify the applicant in writing if the Director determines that the proposed sidewalk café does not meet the criteria established by this chapter or the department. The notice shall identify the criteria which were not met.

(B) Before the 30th day after the date the notice under Subsection (A) is mailed or delivered or the application is denied, the applicant may submit to the director for reconsideration one revised plan for a sidewalk café on the same proposed street. The payment of a new application fee is not required.

(C) A revised plan that is submitted for reconsideration after the deadline for reconsideration in Subsection (B) must be accompanied by a new application, including the application fee.

(D) If the application is denied under 14-194(E) or 14-195, the applicant shall appeal to City Council within fifteen (15) days of the date of the denial or within forty-five (45) days of the application if the denial is made by virtue of 14-194(E). An appeal shall be made in writing and submitted to the City Clerk.

#### **Section 14-196. License Agreement Execution And Delivery.**

(A) The director shall prepare and deliver to the applicant a one-year license agreement on a form approved by the director for an application approved under this chapter. The agreement may include a provision for renewal or extension of the license.

(B) An applicant must execute and return a license agreement not later than two months after the date the license agreement is delivered to the applicant together with:

- (1) a certificate of insurance demonstrating compliance with the requirement of this chapter;
- (2) the annual fee established by separate resolution; and
- (3) other information or documentation required by the department.

(C) The City Manager may execute a license agreement under this chapter, including a license agreement that an applicant returns after the deadline prescribed by Subsection (B).

**Section 14-197. Assignment Or Termination Of License.**

- (A) A license agreement is the personal obligation of the licensee and is not assignable without the City's written consent.
- (B) The City may terminate a license agreement for any reason on 30 days written notice from the City, or due to a breach of its terms by the licensee.

**Section 14-198. Furnishing Rearrangement.**

A licensee may rearrange or reconfigure approved tables, chairs, and other furnishings in the licensed area without obtaining an amendment to the license agreement, if:

- (1) the licensee promptly provides the department with a sketch of the new placement; and
- (2) the furnishings or their new placement do not:
  - (a) extend outside of the licensed area;
  - (b) constitute a danger to the health or safety of a patron or the public, and
  - (c) violate the terms of the license agreement..

**Section 14-199. Offenses And Penalty.**

- (A) A person commits an offense if the person establishes, operates, or maintains a sidewalk café without a license under this chapter or violates the Trinidad Code of Ordinances.
- (B) A person may not sell, barter, trade, store, or take orders for merchandise at a sidewalk café or be in violation of Chapter 17-8, except food or drink to be consumed in the sidewalk café.
- (C) An offense under this chapter is a Class C misdemeanor punishable as prescribed by Section 1-8.

**Section 14-200. Severability.**

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.